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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. STATE LANDS COMMISSION

NOTICE OF INTENTION TO AMEND A CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the California State Lands Commission intends to amend its conflict of interest code pursuant to Government Code Section 87306. The code will be amended to add two designated positions, delete two designated positions, add the words "all levels" to two designated positions, and change language in our category descriptions therefore eliminating our former category 4 and resulting in the renumbering of our former category 5.

A written comment period has been established **commencing on May 18, 2007, and closing on July 2, 2007**. Any interested person may present written comments concerning the proposed code amendments no later than July 2, 2007, to the California State Lands Commission, Attn: Personnel, 100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202. No public hearing on this matter will be held unless any interested person or his/her representative requests, no later than 15 days prior to the close of the written comment period, a public hearing.

The California State Lands Commission has prepared a written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information on which its proposal is based.

Copies of the proposed code amendments and all of the information upon which it is based may be obtained from the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202. Any inquiries concerning the proposed code amendments should be directed to Anne Kerri, Filing Officer, at (916) 574-1912.

The adoption of the proposed amendment will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies;

will not result in any cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

The California State Lands Commission must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Explanation of Conflict of Interest Code Amendments

The California State Lands Commission has made the following changes in their Conflict of Interest Code:

- **Accounting Administrator I (Sup) classification was added**
- **Chief, Research & Dev., Ext. Dev. classification was added**
- **Marine Safety Specialist will add "all levels" to the title to include the levels I & II**
- **Staff Services Manager will add "all levels" to the title to include the levels I, II & III**
- **Forester classification has been abolished**
- **Title Specialist classification has been abolished**
- **Changing language in our category descriptions and eliminating our former category 4**
- **Renumbering former category 5 as category 4**
- **Making changes to assigned disclosure categories affected by the elimination of category 4 and renumbering of category 5**

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Field Fumigant Emissions Reduction
DPR Regulation No. 07-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6000, 6400, 6502, and 6784(b); amend sections 6450, 6450.1, 6450.2, and 6450.3, and renumber to sections 6447, 6447.1, 6447.2, and 6447.3; and adopt sections 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6452.2, 6452.3, and 6454.4 of Title 3, Califor-

nia Code of Regulations (3 CCR). This proposed action would adopt regulations to reduce smog-producing emissions from field fumigant use and, thereby, will achieve court-ordered state air quality objectives for pesticides.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on July 13, 2007. Comments regarding this proposed action may also be transmitted via e-mail <dpr07002@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: July 10, 2007

TIME: 5:00 p.m.

PLACE: Doubletree Hotel Ontario Airport
Lake Gregory Room
222 North Vineyard Avenue
Ontario, California 91764-4431

DATE: July 12, 2007

TIME: 5:00 p.m.

PLACE: University of California Kearney
Agricultural Center
Nectarine Room
9240 S. Riverbend Avenue
Parlier, California 93648

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 4:30 to 5:00 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State and federal law mandates that DPR protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.

In 2006, a federal court ordered DPR to adopt regulations by January 2008 to achieve a 20 percent reduction of pesticide volatile organic compound (VOC) emissions from 1991 levels in certain regions that do not meet the one-hour ozone standards [ozone nonattainment areas (NAAs)] (Court Order concerning remedies, No. Civ. S-04-822 [E.D. Cal. filed April 6, 2006], enforcing *El Comite Para el Bienestar de Earlimart v. Helliker*, 416 F. Supp. 2d 912 [E.D. Cal. 2006]). These proposed regulations comply with the court order. In a parallel, but unrelated action taken in April 2004, the U.S. Environmental Protection Agency (U.S. EPA) issued a more stringent eight-hour ozone standard. California will submit additional State Implementation Plan (SIP) measures in 2007 to meet the new standard, which will include these regulations.

VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit an SIP for achieving and maintaining federal ambient air quality standards for ozone. An ozone NAA is a geographical region in California that does not meet either federal or state ambient air quality standards. The U.S. Environmental Protection Agency designates NAAs in Title 40, Code of Federal Regulations (CFR) section 81.305. In 1994, California's Air Resources Board and DPR developed a plan to reduce pesticidal sources of VOCs in NAAs as part of the California SIP to meet the one-hour ozone standard. Under the 1994 SIP, DPR committed to reduce VOC emissions from agricultural applications of pesticides by specified amounts within specified time periods for five NAAs—Sacramento Metropolitan, San Joaquin Valley, South Coast, Southeast Desert, and Ventura.

A report of 2004 pesticide VOC emissions in five NAAs (DPR's *2006 Update of Volatile Organic Compound Emission Inventory*) showed decreases for two of the NAAs and increases for the others compared to 2003 data. The Sacramento Metropolitan and South Coast NAAs continue to meet the 1994 SIP targets, but significant efforts are needed to meet the SIP goals in the San Joaquin, Ventura, and Southeast Desert NAAs.

Regulation of fumigant use presents a unique challenge and opportunity for reducing pesticide VOC emissions. Fumigant use accounts for over 40 percent of the pesticide VOCs in the San Joaquin Valley NAA, and 80 percent or more for the Southeast Desert and

Ventura NAAs. There are only seven fumigants used, each with distinct and specific pest control properties. Because fumigant products typically do not contain components other than the active ingredient, they cannot be reformulated to reduce VOC emissions, as is being done with other pesticide products.

Measured in pounds, fumigants represent approximately 20 percent of all agricultural pesticides used in California. Some of the most widely used fumigants include methyl bromide, 1,3-Dichloropropene, chloropicrin, dazomet, sodium tetrathiocarbonate, and pesticides that generate methyl isothiocyanate (MITC), such as metam-sodium and potassium N-methyldithiocarbamate, which also is known by the chemical name metam-potassium. Before planting, farmers use fumigants to control disease, weeds, and pests in the soil. Fumigants are also used to disinfest structures and harvested commodities.

Fumigants are usually applied at a rate of several hundred pounds per acre, compared to a few pounds per acre for most other pesticides, so small proportional decreases in application or emission rates have a greater absolute effect on fumigant emissions.

DPR has modeled the proposed regulatory action after existing methyl bromide regulations by placing general and minimum standards for fumigant chemicals and restricting fumigation methods. Although the proposed regulations are modeled after the existing methyl bromide regulations, changes are also being made to those regulations to achieve VOC reductions.

DPR proposes to specify in regulation the total pounds of fumigant VOC emissions allowed in the NAAs in order to achieve a 20 percent reduction. DPR will determine a percentage of VOC emissions (percent of pounds applied) to be assigned to each fumigant application method and the method used to calculate emissions. Fumigant applicators would be required to maintain records of fumigant applications in each of the five NAAs, and forward them to product registrants and DPR. The information is contained on the pesticide use reports currently used by permittees or applicators. Submitting the additional fumigation method information along with the pesticide use report would meet this requirement. Registrants would be required to track and report to DPR the fumigant emissions in each of the five NAAs, and ensure that the emission limits are not exceeded. This regulatory approach is similar to that currently used by 1,3-Dichloropropene (1,3-D) registrants to track 1,3-D emissions.

The proposed regulations were designed to achieve a 20 percent reduction from the 1991 levels in all NAAs, as ordered by the court. Except for fumigation methods and licensing requirements, the proposed regulations will only apply to NAAs. The proposed restrictions on the fumigation methods and licensing requirements

will apply statewide for uniformity and enforceability. Otherwise, implementation of the fumigation and licensing requirements would be difficult because some counties contain both NAAs and areas that are in attainment. This proposal provides for allocation among registrants of fumigant emissions in the San Joaquin, Southeast Desert, and Ventura NAAs. It also prohibits the sale of fumigants for use in those areas except in accordance with an allocation. This is designed to ensure that the total fumigant emissions are brought down to and remain at or below the limits on field fumigant emissions established by the regulations. The registrants will be required to track and report their fumigant emissions within each of the five NAAs, and limit their emissions to their allocations in areas where DPR has allocated fumigant emissions. The registrants will differentiate the emissions resulting from different application methods. The proposed regulations will specify allowable application methods and the percentage of emissions associated with each fumigant and method. If a fumigant registrant exceeds its fumigant emissions allocation or fails to report its fumigant emissions, DPR may seek civil penalties of up to \$10,000 per violation. For subsequent violations, DPR may seek civil penalties of up to \$25,000 per violation and cancel the product registration. If the Sacramento Metro or South Coast NAAs exceed their fumigant emission limits, the regulations will require the Director to establish allocations for those areas as well. In addition, the Director may establish allocations in the Sacramento Metro and South Coast NAAs if it is determined that such allocations are necessary to prevent those areas from exceeding their fumigant emission limits in the future.

Additionally, DPR will reduce and document field fumigant VOC emissions by designating sodium tetrathiocarbonate as a restricted material, placing use restrictions on field soil fumigation methods; requiring fumigation applications to be made by a pest control business utilizing a qualified applicator holding a license in the proposed subcategory of field fumigation pest control; requiring persons applying the fumigants in the five NAAs to keep records of each application, and report monthly to the registrant and DPR, and make clarifying changes to the methyl bromide field fumigation work-hour requirements.

The proposed regulatory action pertains to the following seven fumigant active ingredients. Common brand names and/or alternative chemical names are given in parentheses as an aid to identification: methyl bromide, 1,3-Dichloropropene (Telone, Inline), chloropicrin, metam-sodium (Vapam, Sectagon), Potassium N-methyldithiocarbamate, also known as metam-potassium (K-Pam), dazomet (Basamid), and sodium tetrathiocarbonate (Enzone).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation may have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. DPR has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses.
- (B) Consolidation or simplification of the compliance and reporting requirements for businesses.

- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

Growers who use methyl bromide, 1,3-D, chloropicrin, metam-sodium, potassium N-methyldithiocarbamate (metam-potassium), dazomet, or sodium tetra-thiocarbonate for field soil fumigation prior to planting agricultural crops will incur new restrictions on the use of these pesticides. Pest control businesses that apply the fumigant may also be impacted. The economic impacts result from a reduction in the number of allowable methods, restricting the methods of fumigant application that result in high emissions of VOCs. In many cases the eliminated methods are ones currently favored by growers, who will have to rely on more expensive methods under the new regulation.

Some businesses (growers) will incur a significant adverse economic impact because the emission limits will reduce the amount of fumigant available to them. In most of the ozone NAA areas, growers can make the necessary emission reductions by switching to low-VOC application methods. However, in the Ventura ozone NAA, growers will likely have to leave some fields untreated to obtain the required reductions. Growers will be able to recover the compliance costs by converting those fields to crops for which fumigation is not necessary, or other uses.

For each of the five ozone NAAs, any person who applies field fumigants will need to maintain records of fumigant applications. Additionally, any person who applies field fumigants must report the specified information to DPR and the product registrant’s designated contact for the fumigant product used. Fumigant registrants will incur a significant economic impact because they will need to track the information, as well as provide a report to DPR. Fumigant registrants must ensure that the emission limits are not exceeded, hence reducing the use of their product.

DPR assumes that commercial applicators will be able to pass on additional licensing requirement costs to growers; and therefore, pest control business will not be significantly affected.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will have a significant cost impact on representative private persons or businesses. DPR has determined that the proposed regulation is a “major regulation” as defined in Health and Safety Code section 57005. A major regulation is any California Environmental Protection Agency (Cal/EPA) regulation that will have an economic impact of more than \$10

million on California business. DPR made this determination based upon an economic impact assessment performed by Cal/EPA. This economic impact assessment is listed in the "Documents Relied Upon" section of the Initial Statement of Reasons for this proposed regulatory action and is available from DPR. The Cal/EPA's economic impact assessment estimated the first-year cost of the regulation at approximately \$10–\$120 million. The economic impact assessment addresses these assumptions and the adjustments made to the estimates, as well as the overall reliability of the estimate.

The proposed regulation restricts certain methods of fumigant applications that result in high VOC emissions. In many cases the eliminated methods are ones currently favored by growers, who will have to rely on more expensive methods under the new regulation. Depending on the method, the cost to growers could range from \$10 to \$40 million per year.

The registrant who distributes the fumigants to the growers within Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone NAAs will be required to track fumigation use. DPR estimates this cost at \$0.05 per pound of fumigant emissions, for a total of \$900,000 per year.

As discussed above, according to DPR analysis, Ventura County, where many strawberry growers are located, is the only area in which growers will likely have to leave some fields untreated. The actual 2004 VOC emissions from fumigants in the Ventura ozone NAA were 4.8 tons per day. If growers were to use low-VOC application methods as specified by the proposed regulation, the emissions would have been 4.0 tons per day. The emission limit for Ventura County is 2.633 tons per day. This implies that the regulations would lead to a 34 percent reduction in acreage fumigated. Ventura County reported 30,231 acres fumigated in 2004. In a similar year under the proposed regulation, about 10,000 acres would have to go without fumigation. The estimated value of the crops grown on those 10,000 fumigated acres is \$80 million.

This \$80 million estimated value may be too high. The analysis assumed that all the acres left untreated would have been used to grow strawberries. Strawberries are a high-value crop. Thus other crops requiring fumigation in Ventura County would be the first to lose acres, for a much lower loss per acre. Assuming the \$80 million estimated value is correct, that figure does not represent the actual loss, because growers would be expected to recoup at least some portion of the value through converting the land to other uses. For example, growers that stop growing strawberries could grow a crop that does not require fumigation. For some growers, the price premium on organic strawberries can compensate for the reduced yield and extra labor cost resulting from growing strawberries without fumiga-

tion. Thus, the cost impact of losing fumigated acreage in Ventura County is highly uncertain, ranging from no loss to up to \$80 million.

The cost to current qualified applicators to add a new field fumigation subcategory will be \$50 each, and the cost for new licensees will be \$130 each. The total licensing cost cannot be reliably estimated due to the unknown number of current and new licensees. However, the total cost would be negligible compared to the cost of the other regulation provisions.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11501, 11502, 12111, 12781, 12976, 12981, 14001, 14004.5, 14005, 14023, 14102, and 14151.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11456, 11501, 12111, 12781, 12976, 12981, 14001, 14004.5, 14005, 14102, and 14151.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied

in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Agriculture Program Supervisor
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 9. DEPARTMENT OF REHABILITATION

TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 3. DEPARTMENT OF REHABILITATION

NOTICE OF PROPOSED RULEMAKING

The Department of Rehabilitation (Department) proposes to amend existing regulations described below, after considering all comments, objections, or recommendations regarding the proposal.

PROPOSED REGULATORY ACTION

The Department proposes to amend California Code of Regulations (CCR), Title 9, Division 3, Section 7128.

PUBLIC HEARING

A public hearing will be held on July 2, 2007 at the Department of Rehabilitation, 2000 Evergreen Street, Sacramento, California. The hearing will begin at 10:00 a.m. and will be adjourned immediately following receipt of testimony. It is requested that persons who testify at the hearing also submit two copies of their testimony to the hearing officer.

WRITTEN COMMENT PERIOD

Any interested party may submit written comments on the proposed rulemaking action. The written comment period closes at 5:00 p.m. on July 2, 2007. Comments must be received by that time at the Department of Rehabilitation, Regulations Unit, 2000 Evergreen Street, 2nd Floor, Sacramento, CA 95815-3832. Comments may be submitted by regular mail or electronically to jloyola@dor.ca.gov.

ACCESSIBILITY

On request, the Department will provide copies of the regulation proposal in large print, Braille, on audiotape, or 3.5" diskette. The Department will also transmit copies of the regulation proposal electronically, on request.

The public hearing room is accessible. Individuals who are deaf or hearing impaired and require an interpreter at the hearing, or individuals with disabilities who need any other special assistance, should contact

the Department two weeks in advance of the date of the hearing.

AUTHORITY AND REFERENCE

Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(2), 721(a)(5) and (9), 722(b) and 723(a)(1); 34 CFR Sections 361.5(b)(6), (16) and (33), 361.36, 361.45 and 361.48(b); and Sections 19011, 19102 and 19150(a)(1), Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to amend Section 7128 of its existing regulations based on—

The 1998 amendments to the Rehabilitation Act (Title IV of the Workforce Investment Act of 1998 (P.L. 105–220) as codified in 29 USC 701 et seq.)

Section 3 of the Rehabilitation Act (29 USC 702), which establishes in the office of the U.S. Secretary of Education a Rehabilitation Services Administration (RSA) headed by a Commissioner who acts to carry out the duties of the Secretary. Pursuant to Section 12 of the Rehabilitation Act (29 USC 709), the Secretary is responsible for promulgating regulations to carry out the Act (34 CFR Part 361).

Federal regulations (34 CFR Part 361) implementing the 1998 amendments to the Rehabilitation Act (Federal Register, Vol. 66, No. 11, January 17, 2001).

Documents Relied Upon specified on page 7 in this Notice.

In April 2004, the Department adopted Section 7128 in Title 9, Division 3, Chapter 2, Article 5 of its regulations, to specify general requirements for the development and implementation of the Individualized Plan for Employment (IPE). Section 7128(a) specifies that an Individualized Plan for Employment (IPE) shall be developed and implemented consistent with the requirements of Article 5 in a timely manner for each individual who is determined to be eligible for vocational rehabilitation services and who is in a priority category being served under an Order of Selection implemented pursuant to Section 7053 of the Department's regulations, and that services shall be provided in accordance with the provisions of the IPE. These provisions, including the requirement for development and implementation of an IPE in a timely manner, were based on 29 USC 721(a)(9) and 34 CFR 361.45(a).

On May 2, 2006, the Department received correspondence from the Rehabilitation Services Administration (RSA) reminding the Department that state vocational rehabilitation agencies must include in their State plans an assurance that the Individualized Plan for Employment (IPE) for each individual will be developed in a "timely manner" subsequent to the individual's eligibility (assuming the individual is in a priority category being served under Order of Selection) pursuant to Section 101(a)(9)(A) of the Act, and that the designated State unit (i.e., the Department) must establish and implement standards for the prompt development of IPEs for such eligible individuals, including timelines that take into consideration the needs of the individuals (34 CFR 361.45(e)). This correspondence also cited RSA comments in the Federal Register, Vol. 66, No. 11, January 17, 2001, p. 4429, which stated that regulatory standards and timelines for IPE development called for under 34 CFR 361.45(e) were necessary to guard against delays in service delivery that were, in turn, caused by delays in the IPE development process. The correspondence dated May 2, 2006 also cited an RSA review conducted during March 2006 of agency policies developed pursuant to the requirements of 34 CFR 361.45(e), whereby the RSA determined that 65 of 80 vocational rehabilitation agencies have implemented written policies that include timelines for development of individual IPEs. Of the 65 agencies, 40 require that individual IPEs be developed within 90 days or less subsequent to the determination of eligibility. The RSA encouraged state agencies to consider this information when developing written policies in accordance with 34 CFR 361.45(e) and its underlying intent.

In later correspondence dated May 19, 2006, the U. S. Department of Education advised the Department that the Office of General Counsel (OGC) made the decision that state agencies need to have a specific timeframe for development of the IPE. This decision was based on the OGC's interpretation of 34 CFR 361.45(e) requiring that all state agencies establish written standards for the prompt development of the IPE that include flexible timelines that take into consideration the needs of the individual. The U.S. Department of Education stated that they were looking for a specific number of days for IPE development, but that there could be flexibility in state policy to extend the timeframe based on an agreement between the Vocational Rehabilitation Counselor and the consumer. The U.S. Department of Education also stated that language relating to how the specific needs of the individual could result in the IPE being developed in a shorter or longer period of time could be included.

The Department proposes the amendment of Section 7128 for consistency with federal regulations (34 CFR 361.45(e)), as interpreted by the OGC, requiring the

Department to adopt a specific timeframe (i.e., a specific number of days) for IPE development, and for clarity and consistency with guidance from the RSA. The effect of the proposed amendment of Section 7128 of the Department's regulations will be to establish a 90-day standard for IPE development. Once an individual with an application date of October 1, 2006 or later has been determined eligible to receive services from the Department and is in a priority category being served under Order of Selection, the IPE must be developed within 90 days from the date of the eligibility determination, subject to exceptions specified in subsection (b)(1) and (2) of Section 7128. For individuals with an application date of October 1, 2006 or later who are on a waiting list to receive services, an IPE must be developed within 90 days from the date the individual is removed from the waiting list, subject to exceptions specified in subsection (b)(1) and (2) of Section 7128. Pursuant to Section 7128(b)(1), if exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC), must be entered into the record of services for that individual. Pursuant to Section 7128(b)(2), only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator. The amendment of Section 7128 will promote the expeditious development of individual IPEs, while allowing for some flexibility should unforeseen circumstances occur. The amendment of Section 7128 should limit unnecessary delays in service delivery resulting from delays in IPE development. Section 7128, as amended, is consistent with the OGC's interpretation of 34 CFR 361.45(e) and with RSA guidance.

DOCUMENTS RELIED UPON

- 1) Correspondence by email from Joe Pepin, Rehabilitation Services Administration (RSA) to Catherine Campisi, Director, Department of Rehabilitation, May 2, 2006. Subject: Standard for Prompt Development of IPEs.
- 2) Rehabilitation Services Administration (RSA) comments in the Federal Register, Vol. 66, No. 11, January 17, 2001, p. 4429.
- 3) Correspondence by email from Charles Sadler, U.S. Department of Education to Catherine Campisi, Director, Department of Rehabilitation, May 19, 2006. Subject: Standard for Prompt Development of IPEs.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has determined that these proposed regulations do not impose a mandate on local agencies or school districts and do not require state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

The Department has determined that there is no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the state.

The Department has made an initial determination that these proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These proposed regulations pertain to the internal administration and operation of the Department's vocational rehabilitation program and have no impact on California businesses. These proposed regulations do not impose reporting, recordkeeping, or other compliance requirements on California businesses.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has determined that these proposed regulations will not affect small business as defined in Government Code Section 11342.610. These proposed regulations pertain to the internal administration and operation of the Department's vocational rehabilitation program and do not require that small business legally comply with or enforce the regulations, nor does small business derive a benefit or incur a detriment from the enforcement of the regulations.

The Department has determined that these proposed regulations will not affect the following: 1) the creation or elimination of jobs within the State of California; 2) the creation of new businesses or the elimination of existing businesses within the State of California; or 3) the expansion of businesses currently doing business within the State of California. These proposed regulations pertain to the internal administration and operation of the Department's vocational rehabilitation program and have no impact on California businesses.

The Department has made an initial determination that these proposed regulations will not have a significant effect on housing costs. The proposed regulations pertain to the internal administration and operation of

the Department's vocational rehabilitation program and do not directly or indirectly affect housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the aforementioned public hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance or express terms of the proposed regulations and requests for copies of the text of the proposed regulations, the initial statement of reasons, the modified text of the regulations, if any, the final statement of reasons, or any other information upon which the proposed rulemaking is based should be directed to:

Primary Contact:

Kelly Hargreaves, Chief Counsel
Department of Rehabilitation
2000 Evergreen Street, 2nd Floor
Sacramento, CA 95815-3832
Telephone: (916) 263-8975
FAX: (916) 263-7473
TTY: (916) 263-7477

Designated Backup Contact Person

Juanita Loyola, Regulations Analyst
Department of Rehabilitation
2000 Evergreen Street, 2nd Floor
Sacramento, CA 95815-3832
Telephone: (916) 263-8972
FAX: (916) 263-7473
TTY: (916) 263-7477

An initial statement of reasons has been prepared for this rulemaking and is now available from either of the two contact persons listed above. A complete rulemaking file, containing all materials and documentation related to the proposed rulemaking, is maintained by the Department at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Pursuant to Government Code Section 11340.85, within a reasonable time of issuance, the following documents related to this proposed rulemaking will be posted on the Department's Internet website: public notice; initial statement of reasons; final statement of reasons; notice of a decision not to proceed; the text of a proposed action; a statement of any decision made by the Office of Administrative Law (OAL) regarding a proposed action; the date a rulemaking action is filed with the Secretary of State; the effective date of a rulemaking action; and a statement to the effect that a business or person submitting a comment regarding the proposed action has the right to request a copy of the final statement of reasons. The Department's Internet address is <http://www.dor.ca.gov>. To view documents related to this proposed rulemaking, click on "FYI" and select "Proposed Changes to DOR Regulations."

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After consideration of public comments, the Department may adopt the proposed regulations substantially as set forth without further notice. If the proposed regulations are modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulations, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation. The modified regulations, if any, will be posted on the Department's Internet website at <http://www.dor.ca.gov>. To view modified regulations, click on "FYI" and select "Proposed Changes to DOR Regulations."

Any written comments received by the Department regarding the modified regulations must be responded to in the final statement of reasons required by Government Code Section 11346.9. Comments may be submitted by regular mail or electronically to jloyola@dor.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Copies of the final statement of reasons may be obtained by any interested party on request from either of the contact persons specified herein and will be available on the Department's Internet website within a reasonable period of time after completion. The Department's Internet address is <http://www.dor.ca.gov>. To view the final statement of reasons and other documents

related to this rulemaking, go to the Department's Internet website, click on "FYI" and select "Proposed Changes to DOR Regulations."

TITLE 10. DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to adopt Sections 1436 and 1950.314.8 of Title 10, California Code of Regulations, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The proposed regulations require licensees under these laws to implement appropriate and best risk-management practices, to report whether and how they are complying with these best practices, and to maintain documentation of compliance, as specified. The proposed rules help carry out the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks released on November 14, 2006.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., July 2, 2007. Written comments may also be sent to Karen Fong via electronic mail at regulations@corp.ca.gov or via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Department licenses and regulates finance lenders and brokers under the California Finance Lenders Law, and residential mortgage lenders and servicers under the California Residential Mortgage Lending Act. These laws require licensees to comply with certain requirements relating to books and records, examinations, and reporting. See Financial Code Sections 22156, 22157, 22159, 22701, 50124, 50302, and 50314. Moreover, these laws prohibit licensees from engaging in certain unlawful practices such as unconscionable contracts, loans that do not take into consideration the borrowers' ability to repay, fraudulent underwriting practices, unsafe and injurious practices, and false advertising, as specified. Licensees must also provide clear statements concerning loans, as specified. See, as examples, Financial Code Sections 22161, 22163, 22164, 22302, 22714, 50204, 50308, and 50322.

On November 14, 2006, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) distributed Guidance (the "Guidance") to state agencies that regulate mortgage lenders. The Guidance is available on the AARMR website at www.aarmr.org. The Guidance addresses risks posed by nontraditional mortgage products such as interest-only loans. As stated by CSBS and AARMR in their joint press release, also available on this website, the Guidance serves to inform and protect consumers and enhance the safety and soundness of the industry. Accordingly, CSBS and AARMR encouraged state regulatory agencies to adopt the Guidance and to issue it for use by regulated entities.

This proposed rulemaking implements the Guidance by requiring licensees operating under the California Finance Lenders Law and the California Residential Mortgage Lending Act to: (1) implement appropriate and best risk-management practices on a continuous basis including, but not limited to, the Guidance; (2) report annually to the Department on whether they have made or arranged nontraditional mortgage products, how they have implemented risk-management best practices in relation to the Guidance, whether and how they have put into place internal controls or procedures, as specified, and to also report annually on the number of consumer complaints and non-traditional loan products; and (3) maintain specified documentation as part of their books and records, and make such documentation available to the Commissioner upon request; (4) require clear disclosures for nontraditional loans; and (5) prohibit certain false, misleading, and deceptive advertising.

This proposed rulemaking would require licensees that make or arrange nontraditional mortgage loans, as specified, to provide information concerning their loan products in a form prescribed by the Department. The form (entitled Nontraditional Mortgage Loan Survey and dated 5/1/07) is available on the Department's website at www.corp.ca.gov. In addition, the rulemaking would require licensees to cause to deliver, as specified, certain disclosures concerning payment scenarios and loan balance scenarios among various nontraditional loan products, as prescribed by the Department. The form (entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction and dated 5/1/07) is also available on the Department's website at www.corp.ca.gov.

AUTHORITY

Sections 22150 and 50304, Financial Code.

REFERENCE

Sections 22150, 22156, 22161, 22157, 22159, 22302, 22701, 22714, 50124, 50204, 50302, 50304, 50307, 50308, 50314, and 50322, Financial Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 01/07-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 01/07-C. These documents are also available at the Department's website www.corp.ca.gov.

[corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California 95814-4052.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

REPORTING REQUIREMENT

In accordance with Government Code Section 11346.3, subdivision (c), the Department finds that it is necessary for the health, safety, or welfare of the people of this state to adopt regulations requiring a report as proposed by this rulemaking.

FISCAL IMPACT

- Cost to Department of Corporations: \$125,000 per year. No cost or savings to any other state agency.
- Direct or indirect costs or savings in federal funding to the state: None.
- Other nondiscretionary costs/savings imposed on local agencies: None

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.

- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; or (3) the expansion of businesses currently doing business within the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSON OR BUSINESS**

This rulemaking proposal may result in nominal compliance costs for private persons or businesses directly affected by these proposed regulations. It is anticipated that the work will be addressed within existing resources. However, any nominal increase in costs that may occur will likely be offset by savings realized as a result of this rulemaking proposal, to the extent the proposal prevents loan defaults and foreclosures.

EFFECT ON SMALL BUSINESS

It has been determined that the proposed rules adopted under the California Finance Lenders Law and the California Residential Mortgage Lending Act will not affect small businesses, because consumer finance lenders and mortgage bankers regulated under these laws are excluded from the definition of small business in Government Code Section 11342(h)(2).

CONTACT PERSON

General inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to Karen Fong at (916) 322-3553. Specific inquiries regarding the substance of the proposed regulation may be directed to Anne Marie Liu, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814, (916) 322-3553.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

**Disability Income Insurance Benefit Reduction
Regulations
REG-2006-00009
May 3, 2007**

SUBJECT OF HEARING

Notice is hereby given that a public hearing will be held regarding the adoption of a new article in the California Code of Regulations ("CCR"), Title 10, Chapter 5, Subchapter 2 Policy Forms and Other Documents, titled "Article 2.2. Limits on Benefit Reductions in Group Disability Income Insurance Policies" Sections 2232.45.1 (Authority and Purpose), 2232.45.2 (Benefit Reductions Shall Not Be Based on Involuntary Retirement), 2232.45.3 (Benefit Reductions Shall Not Be Based on Estimated Worker's Compensation Temporary Disability Benefits Not Actually Received by the Insured), 2232.45.4 (Benefit Reductions Shall Not Be Based on Worker's Compensation Permanent Disability), and 2232.45.5 (Benefit Reductions Based on Earnings Received for Work Performed While Disabled). The public hearing will also be regarding the adoption of amendments to the California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 3, Article 12, Disability Insurance Advertisements, Section 2536.2 (Advertisements of Benefits Payable, Losses Covered or Premiums Payable).

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of the new Title 10, Chapter 5, Subchapter 2, Article 2.2 Limits on Benefit Reductions in Disability Income Insurance Policies, pursuant to the authority set forth below:

Section 2232.45.1: Authority cited: Section 790.10, Insurance Code. The Commissioner's decision on the proposed regulation will implement, interpret, and make specific the provisions of Insurance Code section 790.03.

Section 2232.45.2: Authority cited: Section 790.10, Insurance Code. The Commissioner's decision on the proposed regulation will implement, interpret, and make specific the provisions of Insurance Code section 790.03 and Kalvinskas v. California Institute of Technology (9th Cir. 1996) 96 F.3d 1305.

Section 2232.45.3: Authority cited: Section 790.10, Insurance Code. The Commissioner's decision on the proposed regulation will implement, interpret, and make specific the provisions of Section 4903.1, Labor Code; Section 790.03, Insurance Code; and Silberg v. Cal. Life Ins. Co. (1974) 11 Cal. 3d 452.

Section 2232.45.4: Authority cited: Section 790.10, Insurance Code. The Commissioner's decision on the proposed regulation will implement, interpret, and make specific the provisions of Section 4903.1, Labor Code; Section 790.03, Insurance Code; and Russell v. Bankers Life Co. (1975) 46 Cal. App. 3d 405.

Section 2232.45.5: Authority cited: Section 790.10. The Commissioner's decision on the proposed regulation will implement, interpret, and make specific the provisions of Section 790.03, Insurance Code; and Gruenberg v. Aetna Insurance Company (1973) 9 Cal.3d 566.

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 3, Article 12, Disability Insurance Advertisements, section 2536.2 pursuant to the authority vested in him by sections 790.10 of the California Insurance Code. The Commissioner's decision on the proposed amendments will implement, interpret, and make specific the provisions of Section 790.03, Insurance Code.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

Date and time: **July 10, 2007**
10:00 am*

Location: **Department of Insurance Hearing Room**
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

*The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Nancy Hom, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

Questions regarding procedure, the hearing, comments, or the substance of the proposed action should be addressed to the contact person listed above. If she is unavailable, inquiries may be addressed to the backup contact person:

Vanessa Davenport, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4423

DEADLINE FOR WRITTEN COMMENTS

All persons are invited to submit written comments on the proposed regulations during the public comment period. **The public comment period will end at 5:00 p.m. on July 10, 2007.** All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on July 10, 2007.** Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the July 10, 2007 at 5:00 p.m. deadline for written comments.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

POLICY STATEMENT OVERVIEW

Introduction

Disability income insurance policies are “designed to provide a substitute for earnings when, because of bodily injury or disease, the insured is deprived of the capacity to earn his living.” Erreca v. Western States Life Insurance Co. (1942) 19 Cal.2d 388, 397. These policies pay benefits equal to a specified percentage of the insured’s lost earnings. Typically, for insureds who have not retired, these policies provide that the maximum benefit amount payable to the insured shall be reduced by the amounts of other payments received by the insured for his or her disability. These benefit reductions, commonly known as “offsets,” prevent the insured from receiving a double recovery — recovering more money while disabled than while working — and thereby encourage the insured to return to work, if possible. For example, if a policy provides for a maximum benefit amount of 60% of the insured’s salary, this amount may be reduced by the amount of Social Security dis-

ability benefits and state disability income benefits the insured also receives.

Benefit Reductions Based on Estimated Retirement Amounts

Problems have arisen in connection with benefit reductions. Some group disability income insurers seek the ability to estimate and deduct from the maximum benefit amount the amount of retirement benefits the insured would receive if the insured retired, even though the insured has not retired, is therefore not eligible for retirement benefits, and is not receiving those benefits. This practice has been held to be a form of age discrimination because it constitutes “forced retirement.” When these amounts are deducted from the insured’s benefit amount the insured often has no financial choice other than to retire, so that he or she can become eligible to receive the retirement benefits that the insurer is already deducting from the benefit amount under the disability income insurance policy. The proposed regulations prohibit insurers from estimating and deducting from the maximum benefit amount the amount of retirement benefit the insured would receive if the insured chose to retire.

Benefit Reductions Based on Worker’s Compensation Benefits

In other instances, some group disability insurers seek to estimate and deduct from the maximum benefit amount an amount for worker’s compensation temporary disability benefits even though the benefits have not been received by the insured. The practice of reducing the maximum benefit amount for estimated worker’s compensation temporary disability benefits not received by the insured is objectionable because it violates the insurer’s duty of good faith towards the insured; it can cause great financial hardship to the insured, who then receives neither temporary worker’s compensation benefits nor benefits under his or her disability insurance policy; and it circumvents California’s existing statutory scheme for worker’s compensation, which allows the insurer to place a lien on such benefits in the insured’s worker’s compensation claim proceeding. Similarly, some group disability income insurers wish to reduce maximum benefit amounts by the amount of the insured’s worker’s compensation permanent disability benefits. This practice is also objectionable, because California courts have held that, unlike worker’s compensation temporary disability benefits, which are designed to replace lost wages, worker’s compensation permanent disability benefits are not based solely on loss of wages, but are designed to compensate the insured employee for permanent bodily impairment and for the resulting impairment of future earning capacity. Russell v. Banker’s Life Co. (1975) 46 Cal. App.3d 405, 415–416. The proposed regulations address both of these issues by (1) prohibiting insurers

from estimating and deducting for worker's compensation temporary disability benefits that have not been received by the insured, and (2) prohibiting insurers from deducting the insured's worker's compensation permanent disability benefits from benefits payable under the disability income insurance policy.

Benefit Reductions Based on Earnings While Disabled

Some group disability income insurers have reduced the insured's maximum benefit amount by an amount that they estimate is equal to the earnings that the insured will receive for work performed while the insured is disabled. These estimates, if they are made at all, should not be based on speculation or unfounded projections of the earnings a disabled insured might be able to earn at some time in the future. At minimum, these estimates should be grounded upon a good faith reasonable calculation of projected earnings. The proposed regulations set forth this standard.

Inadequate Disclosure of Benefit Reductions

Finally, problems arise when the purchasers of such policies or the persons insured by such policies are unaware, at the time the policy is purchased, that the insured will not receive the maximum benefit amount stated in the policy marketing materials if the benefit reductions in the policy apply. Insureds sometimes do not discover that benefit reductions apply to their maximum benefit amount, or they do not understand the impact of such benefit reductions, until after they have become totally disabled and they request payment of benefits under their policy. Insureds who believe they have paid premiums in order to receive 60% of their pre-disability salary from their insurer may find, for example, that they are instead receiving a fraction of that amount from the insurer due to the application of the benefit reductions in the policy. This problem highlights the need for greater disclosure of benefit reductions in marketing materials. The Commissioner has determined that all group disability income insurers should be subject to uniform requirements in this regard to ensure that no insurer is unfairly disadvantaged. The proposed regulations set forth such requirements.

The overall objectives of the proposed regulations are to require better disclosure of benefit reductions so that policyholders and insureds more fully understand the coverage they are purchasing, to prevent benefit reductions which are inconsistent with existing law, and to help ensure that benefit reductions for estimated earnings meet the standard for good faith and fair dealing.

SUMMARY OF EXISTING LAW; EFFECT OF PROPOSED ACTION

Addition of New Article 2.2

California Code of Regulations Title 10, Chapter 5, Subchapter 2, titled "Policy Forms and Other Docu-

ments," contains regulations which govern the filing and contents of certain forms required to be filed with the Department of Insurance. The Commissioner proposes to add a new article to Subchapter 2, titled "Article 2.2. Limits on Benefit Reductions in Disability Income Insurance Policies," which contains the following regulation sections:

Section 2232.45.1. Authority and Purpose. Existing law does not set forth the legal authority and the purpose of the proposed regulations in this Article. This section does so, to make the authority and purpose clear.

Section 2232.45.2. Benefit Reductions Shall Not Be Based on Involuntary Retirement.

Insurance Code section 790.03 defines "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance." These practices include "Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby. . . ." (Insurance Code section 790.03(a)) and "Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance . . . which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading." (Insurance Code section 790.03(b)). Insurance Code section 790.10, titled "Rules and Regulations," gives the Commissioner express authority to promulgate reasonable rules and regulations as are necessary to administer Article 6.5, Unfair Practices, of which section 790.03 is a part.

Existing law also includes the Kalvinskas decision (Kalvinskas v. California Institute of Technology (1996) 96 F.3d 1305). In Kalvinskas, the United States Court of Appeals for the Ninth Circuit held that it was unlawful for the California Institute of Technology to reduce an employee's disability benefits by the amount of benefits that he could only receive by retiring, when the employee was not eligible for such benefits because he had not chosen to retire.

Proposed section 2232.45.2 implements, interprets, and makes specific the more general statutory requirements of Insurance Code section 790.03(a) and (b) in a manner that is consistent with the Kalvinskas court decision. It would be untrue, deceptive, and misleading for a policy of group disability income insurance to provide that the insurer may estimate and deduct for retirement benefits regardless of whether the insured has chosen to retire, because such a provision would be in-

consistent with and unenforceable under the holding of the Kalvinskas case. Proposed section 2232.45.2 provides that a policy of disability income insurance shall not contain any provision that permits the insurer to estimate and deduct for certain specified retirement benefits if the insured has not voluntarily retired.

Section 2232.45.3. Benefit Reductions Shall Not Be Based on Estimated Worker's Compensation Temporary Disability Benefits Not Actually Received by the Insured.

Insurance Code section 790.03 subsections (a) and (b), set forth above, prohibit policy provisions which are misrepresentations, and prohibit statements with respect to the business of insurance which are untrue, deceptive, or misleading. Insurance Code section 790.10 expressly grants the Commissioner rulemaking authority to implement, interpret, and make these sections more specific. In Silberg v. California Life Insurance Company (1974) 11 Cal.3d 452, the defendant insurer failed to pay benefits under a hospital and medical insurance policy while the insured's worker's compensation claim was pending. As a result, the injured insured became destitute and unable to pay for medical care. The Supreme Court of California held that "the defendant's failure to afford relief to its insured against the very eventuality insured against by the policy amounts to a violation as a matter of law of its duty of good faith and fair dealing implied in every policy." Silberg, 11 Cal. 3d 452 at 462. The Court stated that had the insurer paid benefits under the policy and it was ultimately determined that worker's compensation covered the injury, "defendant could have asserted a lien in the workmen's compensation proceeding to recover the payments it had made and it would have been entitled to payment from the proceeds of the [worker's compensation] award. (citations omitted)"

California Labor Code section 4903.1 provides that before a worker's compensation award is issued or compromise of claim is approved, it shall be determined "whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss of income policy, a self-insured employee welfare benefit plan, or a hospital service contract, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows. . . ." Under the Labor Code, a claim for reimbursement for payment of benefits under a group disability income insurance policy is treated the same way as a claim for reimbursement for payment of hospital and medical expenses: the insurer files a lien in the worker's compensation proceeding.

It would be a misrepresentation for a policy to allow the insurer to estimate and deduct for worker's compensation temporary disability benefits not actually re-

ceived by the insured, because such a provision would be contrary to the holding in Silberg. Similarly, such a provision would be untrue, deceptive, and misleading. Proposed section 2232.45.3 prohibits a policy from containing any provision that permits the insurer to estimate and deduct for worker's compensation temporary disability benefits not actually received by the insured. Proposed section 2232.45.3 implements, interprets, and makes Insurance Code section 790.03 specific by prohibiting policy provisions in group disability income insurance policies that would be unenforceable under Silberg.

Section 2232.45.4. Benefit Reductions Shall Not Be Based on Estimated Worker's Compensation Permanent Disability.

As described above, Insurance Code section 790.03 subsections (a) and (b) prohibit policy provisions which are misrepresentations, and prohibit statements with respect to the business of insurance which are untrue, deceptive, or misleading. Insurance Code section 790.10 expressly grants the Commissioner rulemaking authority to implement, interpret, and make these sections more specific.

In Russell v. Bankers Life Co. (1975) 46 Cal. App.3d 405, the court held that the insurer could offset the amount of worker's compensation temporary disability benefits, but not the amount of worker's compensation permanent disability benefits. As noted above, California courts have held that, unlike worker's compensation temporary disability benefits, which are designed to replace lost wages, worker's compensation permanent disability benefits are not based solely on loss of wages, but are designed to compensate the insured employee for permanent bodily impairment and for the resulting impairment of future earning capacity. Russell v. Bankers Life Co. (1975) 46 Cal. App.3d 405, 415-416. The Labor Code reflects this distinction. California Labor Code section 4903.1(a)(3) permits a lien against temporary disability indemnity for payments made under a group disability income insurance policy, but the lien "shall not exceed the award for temporary disability indemnity." This means that the insurer may not assert a lien against worker's compensation permanent disability benefits for payments made under a group disability income insurance policy.

Proposed section 2232.45.4 implements, interprets, and makes Insurance Code section 790.03 subsections (a) and (b) specific by providing that a policy of group disability income insurance shall not contain any provision that permits the insurer to reduce benefits by deducting for worker's compensation permanent disability benefits.

Section 2232.45.5. Benefit Reductions Based on Earnings Received for Work Performed While Disabled.

As described above, Insurance Code section 790.03 subsections (a) and (b) prohibit policy provisions which are misrepresentations, and prohibit statements with respect to the business of insurance which are untrue, deceptive, or misleading. Insurance Code section 790.10 expressly grants the Commissioner rulemaking authority to implement, interpret, and make these sections more specific.

Existing law states that insurers have a duty “to act in good faith and fairly in handling the claim of an insured, namely a duty not to withhold unreasonably payments due under a policy.” Gruenberg v. Aetna Insurance Co. (1973) 9 Cal.3d 566 at 573. Proposed section 2232.45.5 sets forth this duty and makes it specific as it applies to group disability income insurance policies by providing that an insurer shall not estimate and deduct for earnings received by the insured for work performed while the insured is disabled unless there is a good faith reasonable basis for its calculation of the amount of estimated earnings.

Amendment of Existing 10 CCR Section 2536.2

Section 2536.2. Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

Existing law, 10 CCR section 2536.2, contains very specific requirements and prohibitions applicable to insurance advertisements. The purpose of Title 10, Chapter 5, Subchapter 3, Article 12, of which section 2536.2 is a part, is “to assure truthful and adequate disclosure of all material and relevant information in the advertising of disability insurance.” 10 CCR section 2535.1. However, the existing law does not contain specific requirements for the disclosure of benefit reductions such as offsets.

The proposed amendments to 10 CCR section 2536.2 set forth specific requirements for the disclosure of benefit reductions in advertisements for group disability income insurance. Under the amendments, insurers must describe each such reduction and the circumstances under which the reduction would apply. The advertisement must contain an example of how the reductions would reduce the amount of the benefit the insured would receive. The proposed amendments require that this information be placed in the part of the advertisement in which the maximum benefit amount is described, and that it be given the same prominence as the maximum benefit amount.

DOCUMENTS INCORPORATED BY REFERENCE

The proposed regulations do not incorporate any documents by reference.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies. To the extent the regulations clarify that certain benefit reduction provisions in group disability income forms that are subject to review and approval in California are prohibited, companies subject to these requirements may or may not lose business to out-of-state disability insurers whose group forms are issued or delivered out-of-state and are not subject to California’s filing requirements. There should not be an economic impact as a result of the regulations prohibiting certain benefit reductions because under existing law insurers should not be making these kinds of benefit reductions. Insurance companies authorized to transact disability insurance in California may incur some costs as a result of changing their advertisements to provide the disclosures required by proposed section 2536.2. Proposed section 2232.45.5, concerning insurers’ duty of good faith and fair dealing, should not have a financial impact because insurers are already subject to this standard. The Commissioner has considered performance standards, but the Commissioner has identified no performance standards that would be as effective as the proposed regulations in enforcing the statutes that form the basis for the proposed regulations. The Com-

missioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner has determined that there is likely to be some cost impact for insurance companies in reasonable compliance with the proposed regulations, although the extent of the cost impact is unknown. The cost impact would include the cost of ensuring that policy forms did not include the benefit reduction provisions prohibited by the proposed regulations. It may include the cost of filing policy forms with the Department of Insurance so that compliance is clear. It may also include the cost of revising any advertising, if necessary, to bring it into compliance with the disclosure requirements of the proposed revisions to section 2536.2. There should not be an economic impact as a result of the regulations prohibiting certain benefit reductions because under existing law insurers should not be making these kinds of benefit reductions.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California as well as the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations will not affect small businesses. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed regulations. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEB SITE POSTINGS

Documents concerning this proceeding will be available on the Department's website. The documents shall include the proposed regulations, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when it has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the link "QUICK LINKS" in blue on the right side of the screen. Click on the link "For Insurers" under the "QUICK LINKS" link, then select "Regulations." Click on the "Proposed Regulations" link. Select "Search for Proposed Regulations." When the search field appears, enter "REG-2006-00009" (the Department's regulation file number for these regulations).

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 11. PEACE OFFICER STANDARDS AND TRAINING

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest.

A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Public Comments Due by July 2, 2007, at 5:00 PM

Notice is also given that any interested person, or authorized representative, may submit written comments

relevant to the proposed regulatory action by fax at 916.227.5271 or by letter to the:

Commission on POST
Attention: Rulemaking
1601 Alhambra Boulevard
Sacramento, CA, 95816-7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammar changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes to the proposal.

Authority and Reference

This proposal is made pursuant to the authority vested by Penal Code § 13503 — POST powers and § 13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code § 13503(e) — POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses, and Penal Code §13519.12 — POST authority to establish training standards involving the responsibilities of first responders to terrorism incidents and training standards for related instruction.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

For more than a decade, POST has pursued its Strategic Plan objectives to develop training and certification standards for all who teach in POST-certified training courses. From the outset, POST made three underlying assumptions: 1) instructors who present POST training courses must be trained, 2) POST must establish standards for initial and ongoing training to ensure universal instructor competency, and 3) implementation of instructor standards will take place over time to avoid undue burdens on POST training presenters. This incremental approach has proven to be effective and has allowed POST to collaborate with its training partners in developing components and standards.

The impetus for POST instructor standards evolved from the following:

- State training standards for instructors are lacking.
- Other POST-type agencies have been establishing instructor training and certification requirements.

— The POST Strategic Plan Objective, established almost a decade ago, calls for POST to transform its training from primarily lecture-based (instructor-centered) to an adult-experiential learning (student-centered) approach.

California law enforcement and POST both recognize the benefits of student-participative learning. POST also recognizes that most instructors have to be “retooled” for this new approach to instruction. The transition to adult-experiential learning has unquestionably fueled the drive to establish instructor training and certification standards.

Instructor competency is arguably the most critical infrastructure component of the training delivery system for California law enforcement. Other components include curriculum content, testing, funding, and facilities. The Commission has a lengthy and commendable record of accomplishment in supporting the instructor infrastructure need. The most recent, and perhaps most significant incremental added component, was the January 2006 Commission action mandating the Academy Instructor Certificate Program (AICP). This action has necessitated numerous supporting activities, including the proposed amendments listed below.

Regulation 1009 amendments delete the *voluntary* provisions of the AICP, provide for the designation of POST-Certified Instructor, and establish a July 1, 2007, effective date for AICP participation.

Regulation 1070 amendments provide that the Academy Instructor Certification Course is a prerequisite to most of the specialized instructor courses effective July 1, 2007.

Regulation 1071 amendments delete a duplicative academy instructor requirement and make conforming changes.

Regulation 1082 amendments restate that the Academy Instructor Certification Course (AICC) is a prerequisite to most of the specialized instructor courses listed in this section as of July 1, 2007. The regulations also list courses that are exempt from the proposed AICC prerequisite, eliminate course components that duplicate the AICC component of adult learning concepts, and make other needed changes.

Regulation 1083 amendments delete the duplicative Academy Instructor Development Course requirement in favor of establishing a single minimum training and certification requirement (Academy Instructor Certification Course).

The cumulative effect of these proposed changes will require that all newly appointed (on or after July 1, 2007) instructors of Regular Basic Course components complete a 24-hour instructor development course before instructing. Instructors must meet POST instructor standards. Any academy presenters who use or attempt to use instructors who have not satisfied the minimum

training standard may lose academy certification pursuant to Commission Regulation 1058.

Local Mandate — This proposal does not impose a mandate on local agencies or school districts.

Fiscal Impact Estimates — This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with § 17500) of the Government Code, Division 4. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

Costs or Savings to State Agencies — POST anticipates no additional costs or savings to state agencies.

Business Impact/Small Businesses — The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code section 11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Assessment Regarding Effect on Jobs/Businesses — The Commission has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs, will not result in the elimination of existing businesses or the creation or expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses — The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs — None.

Alternatives — The Commission must determine that no reasonable alternative considered by the agency, or otherwise identified and brought to the agency’s attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

Contact Persons — Please direct inquiries or comments about this proposed regulatory action to the following individuals:

Patricia Cassidy,
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA, 95816-7083
916.227.4847
Patricia.Cassidy@post.ca.gov
916.227.5271(FAX)

Bryon Gustafson
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA, 95816-7083
916.227.3902
Bryon.Gustafson@post.ca.gov

Text of Proposal — Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST website at:

<http://www.post.ca.gov/RegulationNotices/Regulation-Notices.asp>

Availability and Location of the Rulemaking File and the Final Statement of Reasons — The rulemaking file contains the above-mentioned documents and all information upon which POST is basing this proposal and available for public inspection by contacting the person named above. To request a copy of the Final Statement of Reasons once it has been prepared submit a written request to the contact person named above.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on July 2, 2007.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5 p.m. on June 18, 2007.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 4005 of the Business and Professions

Code and to implement, interpret, and make specific reference sections 122, 163.5, 4127.5, and 4400 of the Business and Professions Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy and the administration of Chapter 9, Division 2.

Business and Professions Code section 122 allows the board to charge a fee for the processing and issuance of a duplicate copy of any certification of licensure or other form evidencing licensure or renewal of licensure.

Business and Professions Code section 163.5 establishes the criteria to determine the delinquency fee for any licensee within the Department of Consumer Affairs.

Business and Professions Code section 4127.5 establishes the minimum and maximum fee for the issuance on nongovernmental license or renewal of a license to compound sterile drug products.

Business and Professions Code section 4400 establishes the statutory minimum and maximum fee schedule for application, renewal and other fees for additional board applicants and licensees.

California Code of Regulations section 1749 establishes the fee schedule for application, renewal and other fees for board licensees and applicants.

This proposal would raise board fees to their statutory maximum as provided for in the above referenced Business and Professions Code sections. This proposal is necessary to ensure sufficient resources to maintain current board operations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Estimated to increase board revenues for FY 07/08 by approximately \$795,000 and an increase to ongoing annual revenue by approximately \$1.5 million. The board does not anticipate any effect on federal funding.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The board has made an initial determination that the proposed regulatory action would in-

crease a business renewal \$75 to \$100/annually per business license. In addition a business seeking licensure with the board would also experience a \$75–\$100 increase in the application fee, per site.

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board of Pharmacy has made an initial determination that a pharmacist renewing his or her license would be subject to an additional \$45 biennially and designated representatives would be subject to an additional \$40 annually to renew a license.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has determined that the proposed regulations would have a minimal effect on small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Any interested person may present written statements relevant to the above determinations to the Board of Pharmacy at the address indicated under “Contact Person.”

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd. N219, Sacramento, California

95834, or from the Board of Pharmacy Web site (www.pharmacy.ca.gov).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Anne Sodergren
Address: 1625 N. Market Blvd. N219
Sacramento, CA 95834
Telephone No.: (916) 574–7913
Fax No.: (916) 574–8618
E-Mail Address: anne_sodergren@dca.ca.gov

The backup contact person is:

Name: Virginia Herold
Address: 1625 N. Market Blvd. N219
Sacramento, CA 95834
Telephone No.: (916) 574–7911
Fax No.: (916) 574–8618
E-Mail Address: virginia_herold@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.pharmacy.ca.gov.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on July 2, 2007.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5 p.m. on June 18, 2007.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt

the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 4005 of the Business and Professions Code and to implement, interpret, and make specific reference sections 733 and 4122, Business and Professions Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy.

California Code of Regulations Section 1707.2 currently requires that every pharmacy prominently post a "Notice to Consumers" poster as authorized by Business and Professions Code section 4122.

Assembly Bill 2583 (Chapter 487, Statutes 2006) amended sections 733 and 4122 of the Business and Professions Code to require the board to add to the "Notice to Consumers", a statement that describes a patient's rights to obtain medication from a pharmacy even if a pharmacist has ethical, moral or religious grounds against dispensing a particular drug, in which case protocols for getting the medication are required.

Section 1707.2 of the California Code of Regulations will be amended to include the additional language now required.

The board will develop and distribute a new "Notice to Consumers" poster.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: \$18,000

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board of Pharmacy is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Board will develop, reproduce and distribute this revised Notice to Consumer within existing Board funding.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small business. This proposal expands the information contained on the existing "Notice to Consumer" posting and requires that pharmacies post the revised poster(s). The board will develop and reproduce the poster at no additional cost to pharmacies.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Any interested person may present written statements relevant to the above determinations to the Board of Pharmacy at the above-mentioned address.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd. N219, Sacramento, California 95834, or from the Board of Pharmacy Web site (www.pharmacy.ca.gov).

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Anne Sodergren
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Telephone No.: (916) 574-7911
Fax No.: (916) 574-8618
E-Mail Address: virginia_herold@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.pharmacy.ca.gov.

**TITLE 23. STATE WATER RESOURCES
CONTROL BOARD**

WATERS

**DIVISION 3: STATE WATER RESOURCES
CONTROL BOARD**

**CHAPTER 16: UNDERGROUND STORAGE
TANK REGULATIONS**

NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN THAT THE
STATE WATER RESOURCES CONTROL
BOARD PROPOSES TO ADOPT
AMENDMENTS TO THE UNDERGROUND
STORAGE TANK REGULATIONS AFTER
CONSIDERING ALL COMMENTS,
OBJECTIONS, AND RECOMMENDATIONS
REGARDING THE PROPOSED ACTION**

PROPOSED REGULATORY ACTION

The State Water Resources Control Board (State Water Board) proposes to amend sections 2621, 2632, 2634, 2635, 2636, 2637, 2638, 2661, 2666, 2711 and 2713, and to delete the text, forms and instructions in Appendix V in Title 23 of the California Code of Regulations (CCR). These sections concern underground storage tanks.

**PUBLIC HEARING AND WRITTEN
COMMENT PERIOD**

The State Water Board will hold a public hearing on the proposed amendments to regulations at 1:30 p.m., on July 16th, 2007 in the Byron Sher Auditorium at 1001 "I" Street, Sacramento, CA. Reasonable accommodation or sign language interpreting services will be provided upon request. Such requests should be made no later than 15 days prior to the date of the public hearing by contacting Karen White, Office of Employee Assistance, at 916-341-5883.

Any written statements, arguments or contentions related to the proposed regulations must be received by 5:00 p.m. on July 16th, 2007. Submit written comments to: Terry Brazell, State Water Resources Control Board, UST Program, 1001 "I" Street, P.O. Box 2231, Sacramento, CA, 95812. Written comments, arguments, or contentions sent by mail or hand-delivered are requested (but not required) to be submitted in triplicate. Comments by FAX (916-341-5808) must be received before 5:00 p.m. on the last day of the public comment period.

AUTHORITY AND REFERENCE

Water Code sections 185 and 1058, and Health and Safety Code sections 25299.3 and 25299.7, authorize the State Water Board to adopt the proposed amendments to regulations, which would correct non-substantive errors in the current regulations and implement the underground storage tank permit application and data reporting requirements of Health and Safety Code, Chapter 6.7, sections 25286 and 25289.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California's Legislature enacted Health and Safety Code (HSC) Chapter 6.7 in 1984, creating a regulatory program for underground storage tanks (USTs) storing hazardous substances. Since then, the Legislature has amended Chapter 6.7 in response to federal mandates relating to USTs, or new information regarding changing industry practices and/or the performance of USTs meeting then current UST regulatory standards in California. Various amendments to Chapter 6.7 in recent years have imposed new construction and monitoring requirements for USTs that cannot be documented properly on the UST permit application forms currently in regulation. Therefore, updated versions of the UST permit application forms are needed.

These proposed regulations will amend the references to UST operating permit application "Form A," "Form B," and "Form C" throughout Title 23, Chapter 16. These amendments reflect concurrent regulatory changes to the titles and content of these forms that were previously revised and relocated from Title 23, Appendix V (following § 2714) to CCR, Title 27, Division 3, Subdivision 1, Chapter 6. The proposed amendments will also correct several non-substantive errors in the current regulations, and implement the UST permit application and data reporting requirements of HSC, Chapter 6.7, sections 25286 and 25299.7.

Many of the amendments proposed by the State Water Board are made to conform to amendments proposed by the California Environmental Protection Agency (CalEPA) through a concurrent rulemaking. The UST permit application forms, revised and relocated from Title 23 to CCR, Title 27, Division 3, Subdivision 1, Chapter 6 via a 1999 CalEPA rulemaking, are concurrently amended by CalEPA. The revised forms, as well as a new standardized monitoring plan form, are designed to be easier and less time consuming for local regulatory agencies and UST owners and operators to complete. Additionally, the Report 6 used by CUPAs is revised via concurrent CalEPA rulemaking to standardize Red Tag reporting and to meet United States Environmental Protection Agency UST data reporting re-

quirements. This rulemaking updates each of the Title 23 references to the amended permit application forms and Report 6.

The previous requirement for UST owners and operators to submit a written procedure for monitoring has been amended to specify that the written procedure be submitted on a standard form. Using a standard form will make it easier for owners and operators to provide complete and accurate information about their monitoring program, and will promote consistency among the more than 100 local regulatory agencies implementing the UST program in California. The referenced "Monitoring Plan" form is proposed to be adopted into CCR, Title 27 by CalEPA.

In summary, these amendments to Title 23 will:

1. Amend the references to UST operating permit application "Form A," "Form B," and "Form C" throughout Title 23, Chapter 16. These amendments reflect concurrent regulatory changes to the title and content of these forms that were previously revised and relocated from Title 23, Appendix V (following § 2714) to CCR, Title 27, Division 3, Subdivision 1, Chapter 6.
2. Specify that UST owners and operators use a new standard form for submitting new and previously required information on procedures for monitoring. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA. This standard form will make it easier for owners and operators to provide complete and accurate information about their monitoring program, and will promote consistency among the more than 100 local regulatory agencies implementing the UST program in California.
3. Specify that local regulatory agencies use a new reporting format for submitting new and previously required information on UST statistics, inspections, and enforcement activities. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA.
4. Make several non-substantive clarifications and corrections to unclear sections or erroneous citations and references within Title 23, Chapter 16.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: The State Water Board has determined that the proposed amendments would not impose a mandate on local agencies or school districts, nor are there any costs for which reim-

bursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Cost or Savings to any State Agency: The State Water Board has determined that these regulations will not result in any cost or savings to any State agencies. State agencies that own or operate USTs will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for State agencies that own and/or operate USTs.

Other Non-discretionary Costs or Savings to Local Agencies: The State Water Board has determined that these regulations will not result in any cost or savings to any local government agencies. Local government agencies that regulate UST systems will have to modify their databases to accommodate the new and revised forms referenced in these proposed regulations. Costs associated with that modification are part of overall database management costs associated with concurrent rulemaking by Cal/EPA and the Department of Toxic Substances Control (DTSC). These costs are discussed in detail in the concurrent Cal/EPA, Title 27 rulemaking that includes the modified and new UST forms referenced in this rulemaking. It would be duplicative to include an analysis of those costs in this rulemaking.

Local government agencies that own or operate USTs will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for local government agencies that own and/or operate USTs.

Cost or savings in federal funding to the state: None.

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting California Businesses: The State Water Board has made an initial de-

termination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Types of Businesses Affected: Any business that owns and/or operates a UST system that is not categorically exempt from the UST regulations may be affected by the proposed regulations. These businesses are mostly retail fuel service stations either owned or leased-out by major petroleum distributors, or small, independently owned facilities. Other businesses affected include those that own or operate USTs for their own use, such as, but not limited to, factories, equipment rental yards, construction companies, mines.

Projected Reporting, Record keeping, and Other Compliance Requirements: The proposed regulation will mandate use of new forms to transmit information to local regulatory agencies. The information being transmitted will not be new, only the format.

Potential Impact on Private Persons or Businesses Directly Affected: The State Water Board has made an initial determination that those private persons or businesses using computer software to generate UST permit application forms may incur a one-time cost to modify their computer software to comply with the proposed regulations. These costs, expected to be minor, are discussed in detail in the concurrent Cal/EPA, Title 27 rulemaking that includes the modified and new UST permit application forms referenced in this rulemaking. It would be duplicative to include an analysis of those costs in this rulemaking.

Effect on the Creation or Elimination of Jobs within California: The State Water Board has determined that these regulations will not have any effect on the creation or elimination of jobs within California.

Effect on the Creation of New Businesses or Elimination of Existing Businesses within California: The State Water Board has determined that these regulations will not have any effect on the creation of new businesses or elimination of existing businesses within California.

Effect on the Expansion of Businesses Currently Doing Business in California: The State Water Board has determined that these regulations will not have any effect on the expansion of businesses currently doing business in California.

Potential Significant Impact on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The State Water Board has determined that this regulation will not have any effect on the small businesses within California. Businesses that own or operate USTs

will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for businesses that own and/or operate USTs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Water Board must determine that no reasonable alternatives it considered, or that have otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Water Board has prepared the following for public review: 1) an initial statement of reasons for the proposed amendments; 2) a rulemaking record which contains all of the information upon which the proposed amendments are based; and 3) the text of the proposed amendments. Copies of these documents will be available upon request by writing to the State Water Resources Control Board, attention: Mrs. Terry Brazell, Division of Water Quality, Underground Storage Tank Program, 1001 "I" Street, 15th Floor, P.O. Box 2231, Sacramento, CA, 95812. This address is also the location of public records, including reports, documentation, and other material related to the proposed amendments. Copies of these documents are also available on the State Water Board's Underground Storage Tank Program website at: <http://www.waterboards.ca.gov/ust/>. Upon completion of the public comment period and conclusion of the public hearing for this proposed rulemaking the State Water Board will prepare a final statement of reasons for proposed amendments, which will also be available upon request at the above address and website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period and public hearing, the State Water Board may adopt the proposed

regulations. If substantive changes are made, the modified text will be made available for comment for at least 15 days prior to adoption, and sent to the following persons: all persons who testified at the public hearing; all persons who submitted written comments at the public hearing; all persons whose comments were received by the State Water Board during the public comment period; and all persons who requested notification from the State Water Board of the availability of such changes.

Please direct all written comments, procedural inquiries, and technical questions to:

Mrs. Terry Brazell
State Water Resources Control Board
Division of Water Quality
1001 "I" Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812
(916) 341-5645
tbrazell@waterboards.ca.gov

Back-up contact person:

Mr. Scott Bacon
State Water Resources Control Board
Division of Water Quality
1001 "I" Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812
(916) 341-5873
sbacon@waterboards.ca.gov

GENERAL PUBLIC INTEREST

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF CONSENT DECREE
FORMER CORNELL-DUBILIER
ELECTRONICS SITE
4144 Glencoe Avenue, Los Angeles, CA

Public Comment Period: May 18, 2007 through
June 20, 2007

The Department of Toxic Substances Control ("DTSC"), pursuant to the authority vested in DTSC under Section 107 of CERCLA, 42 U.S.C. § 9607, and California Health and Safety Code section 25358.3(e), proposes to finalize a Consent Decree regarding the Former Cornell-Dubilier Electronics, Inc. Site, located at 4144 Glencoe Ave, Los Angeles, California (the "Facility.")

On May 3, 2007, DTSC lodged the Consent Decree in United States District Court, Central District of California under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.* The Consent Decree is intended to resolve the liability of defendants Cornell-Dubilier Electronics Inc. and Glencoe Properties, LLC for reimbursement of certain response costs incurred by DTSC in responding to a release or threatened release of hazardous substances at the Facility and requires the defendants to perform work at the Facility, as specified in the Consent Decree, Land Use Covenant and Statement of Work. The Consent Decree provides contribution protection to the defendants and includes mutual covenants not to sue.

DTSC is holding a public comment period on the Consent Decree. Written comments on the proposed Consent Decree must be submitted no later than June 20, 2007. Comments sent electronically or by fax should also be sent by mail. Any comments sent only by mail must be postmarked by June 20, 2007. DTSC may modify or withdraw its consent to the Consent Decree if such comments disclose facts or considerations that indicate the proposed Consent Decree is inappropriate, improper or inadequate.

Comments should be addressed to:

Todd Wallbom
twallbom@dtsc.ca.gov
Department of Toxic Substances Control,
1011 North Grandview Avenue
Glendale, CA 91201-2205

Fax number (818) 551-2874

Comments should refer to the Cornell Dubilier proposed Consent Decree.

During the public comment period, the Consent Decree may be examined on the DTSC Internet Web site at: http://www.envirostor.dtsc.ca.gov/public/profile/report.asp?global_id=19350473

The Consent Decree may also be examined at the following location:

Department of Toxic Substances Control,
1011 North Grandview Avenue
Glendale, California 91201-2205.
Please Contact Mr. Wallbom at (818) 551-2855
Hours: Monday-Friday 8:00am - 5:00pm

A copy of the Consent Decree may also be obtained by mail from the DTSC Office in Glendale, 1011 North Grandview Avenue, Glendale, CA 91201-2205, or by faxing or e-mailing a request to Mr. Todd Wallbom, twallbom@dtsc.ca.gov, fax number (818) 551-2874. If requesting a copy from DTSC, the cost for reproduction

is \$0.15 (15 cents) per page. Please make your check or money order payable to the Department of Toxic Substances Control and mail it with your request to the address shown above.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

Various Education Requirements

This action makes comprehensive revisions to the Bureau's licensing and training requirements for licensed vocational nurses and psychiatric technicians. This action is the resubmittal of previously withdrawn OAL file number 07-0116-02S.

Title 16

California Code of Regulations

ADOPT: 2516.5, 2518.7, 2576.7 AMEND: 2502, 2516, 2526, 2526.1, 2530, 2533, 2540.3, 2540.4, 2542.2, 2542.3, 2542.4, 2542.5, 2544, 2544.1, 2544.2, 2544.3, 2544.4, 2547.2, 2547.3, 2547.4, 2547.5, 2562, 2575, 2581, 2581.1, 2585, 2587, 2592.3, 2592.4, 2593, 2593.1, 2593.2, 2593.3, 2593.4

Filed 05/04/07

Effective 06/03/07

Agency Contact: Michele Hedding (916) 263-7848

CALIFORNIA HORSE RACING BOARD

Application for License to Conduct a Horse Racing Meeting

This action updates the applications used by associations and by fairs for Board approval to conduct a horse racing meeting, adding a notice concerning on-track first aid requirements, listing pertinent information concerning first aid that must be provided in the application, estimates of the average daily purse, and identification of the provider of advance deposit wagering services.

Title 4
California Code of Regulations
AMEND: 1433
Filed 05/08/07
Effective 06/07/07
Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA HORSE RACING BOARD

Coupling of Horses

This regulatory action exempts quarter horse races from the current Rule 1606 requirement that two or more horses shall be coupled as a single wagering interest and as an entry when they are owned in whole or in part by the same person or persons.

Title 4
California Code of Regulations
AMEND: 1606
Filed 05/07/07
Effective 06/06/07
Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA STUDENT AID COMMISSION

State Nursing Assumption Program of Loans for Ed. for Nursing Faculty

This regulatory action implements Education Code sections 70100 through 70107 which allow the California Student Aid Commission (CSAC) to make student loan payments on behalf of program participants who took out those loans to finance their graduate or undergraduate nursing education. The participants are obligated to teach in a nursing program in an accredited California college or university.

Title 5
California Code of Regulations
ADOPT: 30910, 30911, 30912, 30913, 30914, 30915, 30916, 30917
Filed 05/07/07
Effective 05/07/07
Agency Contact: Linda Brown (916) 526-7599

CALIFORNIA WALNUT COMMISSION

Conflict of Interest Code

The California Walnut Commission is amending its conflict of interest code found at the captioned citation. The changes have been approved for filing by the Fair Political Practices Commission on March 22, 2007.

Title 2
California Code of Regulations
AMEND: div. 8, ch. 48, sec. 53700
Filed 05/08/07
Effective 06/07/07
Agency Contact: Dennis Balint (916) 646-3807

COMMISSION ON STATE MANDATES

Incorrect Reduction Claims Process

This regulatory action is to implement AB 2652 (Stats. 2006, Ch. 168) which amends the Commission's incorrect reduction claims process. It is exempt from OAL review and was submitted to OAL for filing and printing only pursuant to Government Code section 17527(g).

Title 2
California Code of Regulations
ADOPT: 1185.2, 1185.3, 1185.4 AMEND: 1185, 1185.01 (renumbered to 1185.1), 1185.02 (renumbered to 1185.5), 1185.03 (renumbered to 1185.6), 1185.1 (renumbered to 1185.7)
Filed 05/08/07
Effective 05/08/07
Agency Contact: Cathy Cruz (916) 323-3562

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Firearms

This regulatory action exempts Community Correctional Facilities (CCFs) from the armory armed post coverage requirement, provided they are under some form of 24-hour-a-day observation or surveillance and equipped with alarms. This amendment will reflect the evolution of DOCR policy due to the expansion in number of CCFs and the staffing issues of these smaller, minimum to medium security correctional facilities.

Title 15
California Code of Regulations
AMEND: 3276(e)
Filed 05/02/07
Effective 06/01/07
Agency Contact: John McClure (916) 341-6894

DEPARTMENT OF FOOD AND AGRICULTURE

Seed Potato Certification Agencies

The repeal of several existing regulations and adoption of one new regulation will remove regulations regarding California certified seed potatoes. The Department is designating the California Crop Improvement Association as the new seed potato certification agency in California pursuant to Food and Agricultural Code section 52651.

Title 3
California Code of Regulations
ADOPT: 3035 REPEAL: 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8, 3035.9
Filed 05/03/07
Effective 06/02/07
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE
Diaprepes Root Weevil Interior Quarantine

DFA has been sending flyers and notices about this pest to businesses and residences in and near the currently quarantined areas. On October 17, 2006, four adult root weevils were collected by a resident and one was collected by a DFA employee in the San Diego city area. Subsequently, two additional weevils were found at another residence in San Diego on November 6, 2006. Two more weevils were found on November 7, 2006 at a La Jolla residence. The next day, two more weevils were found at another La Jolla residence. Finally, on December 6, 2006, six weevils were collected from a residence in San Diego. Unfortunately, the first four recent finds were not properly coded into the DFA database and were not detected by DFA until the December 6, 2006 find. This certification of compliance permanently adopts the emergency regulations first effective on December 20, 2006.

Title 3

California Code of Regulations

AMEND: 3433

Filed 05/07/07

Effective 05/07/07

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF PARKS AND RECREATION
OHMVR Grant & Cooperative Agreement Regulations

This certificate of compliance makes permanent the emergency regulations that deal with local assistance grants, grants to nonprofit organizations and education institutions, and cooperative agreements with federal agencies and federally recognized Native American tribes by the Off-Highway Motor Vehicle Recreation (OHMVR) Division of the Department of Parks and Recreation. These regulations will govern applications submitted on or after January 1, 2007. The regulations include definitions, application requirements, types of projects, and specific application and content requirements for the individual projects, environmental impact reporting requirements, wildlife habitat protection program (WHPP)/habitat management program (HMP) and soil conservation requirements, match requirements, and accounting, audits and annual performance reviews. This regulatory action also incorporates by reference the Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements Program (April 2007) ("Grants Program Manual"), which includes among other regulatory provisions: application instructions, application evaluation criteria and point scoring system, approval of applications, project administration procedures and forms, and a glossary of terms. This regulatory action also includes

the repeal of regulations applicable to the OHMVR grant program that were in effect prior to the adoption of the emergency regulations that led to this current certificate of compliance.

Title 14

California Code of Regulations

ADOPT: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72 REPEAL: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21, 4970.22, 4970.23, 4970.24, 4970.25, 4970.26, 4970.27, 4970.28, 4970.29, 4970.30, 4970.31, 4970.32

Filed 05/07/07

Effective 05/07/07

Agency Contact: John Pelonio (916) 324-4442

DEPARTMENT OF PESTICIDE REGULATION
Toxic Air Contaminant

This regulatory action amends the list of toxic air contaminants pursuant to Food and Agriculture Code section 14023. Sulfuryl fluoride is a colorless, odorless gas that is used as a fumigant (primarily).

Title 3

California Code of Regulations

AMEND: 6860

Filed 05/07/07

Effective 06/06/07

Agency Contact:

Linda Irokawa-Otani (916) 445-3991

FISH AND GAME COMMISSION
Rock Crabs as Bait in Finfish Traps

Fish and Game Commission amended section 125 and adopted section 125.1 governing requirements, restrictions, and penalties related to rock crab trap permits and using rock crab as bait in finfish traps. This action amends section 125 by adding a provision for revocation or suspension of a rock crab trap permit for violation of the Fish and Game Code or regulations adopted by the commission. Newly adopted section 125.1 clarifies how the statutory 4 1/4 inch minimum size dimension is measured for rock crabs, requires immediate measuring of rock crab and releasing of undersized crabs, limits the taking of incidental species caught in rock crab traps, and prohibits possession of rock crab in a condition where the size or species cannot be determined.

Title 14
California Code of Regulations
ADOPT: 125.1 AMEND: 125
Filed 05/03/07
Effective 06/02/07
Agency Contact: Sherrie Koell (916) 653-4899

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
Pesticide — Related Illness Reporting**

The Office of Environmental Health Hazard Assessment (“OEHHA”) adopted 17 CCR section 96100 to define the information to be collected and submitted by local health officers upon receiving a report of a known or suspected pesticide-related illness from a physician. Much of this information was already being collected by OEHHA, however, pursuant to Executive Order S-1-03, OEHHA determined the collection of the information, absent specific regulations, could be considered an underground regulation. This regulation therefore standardizes the information that must be reported by local health officers to OEHHA and implements Health and Safety Code section 105200.

Title 17
California Code of Regulations
ADOPT: 96100
Filed 05/04/07
Effective 06/03/07
Agency Contact: Joy Wisniewski (916) 327-7324

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN DECEMBER 06, 2006 TO
MAY 09, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

05/08/07 AMEND: div. 8, ch. 48, sec. 53700
05/08/07 ADOPT: 1185.2, 1185.3, 1185.4
AMEND: 1185, 1185.01, 1185.02,
1185.03, 1185.1
04/30/07 AMEND: 1859.124.1
04/25/07 AMEND: 1859.83, 1859.202, 1866
04/16/07 AMEND: 18401
04/04/07 AMEND: 28010 REPEAL: 36000

03/27/07 AMEND: 59560
03/20/07 ADOPT: 18746.3
03/15/07 AMEND: div. 8, ch. 102, section 59100
03/14/07 AMEND: div. 8, ch. 73, section 56200
03/01/07 AMEND: 21922
02/28/07 AMEND: 714
02/16/07 AMEND: 1859.2, 1859.76, 1859.83,
1859.163.1, 1859.167, 1859.202, 1866
02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566,
2567
01/26/07 ADOPT: 599.550, 599.552, 599.553,
599.554 AMEND: 599.500
01/19/07 ADOPT: 18531.62, 18531.63, 18531.64
AMEND: 18544
01/11/07 AMEND: 1894.4, 1896.12
01/09/07 AMEND: 18707.1
01/09/07 ADOPT: 18530.3
01/09/07 ADOPT: 18534
01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106
12/22/06 AMEND: 21906
12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3,
1859.78.5
12/18/06 AMEND: 18703.4, 18730, 18940.2,
18942.1, 18943
12/18/06 ADOPT: 18421.3
12/18/06 AMEND: 18545
12/18/06 AMEND: 18312, 18316.5, 18326,
18401, 18521, 18537.1, 18704.5,
18705.5, 18730, 18746.2
12/14/06 ADOPT: 18707.10
12/13/06 ADOPT: 20108, 20108.1, 20108.12,
20108.15, 20108.18, 20108.20,
20108.25, 20108.30, 20108.35,
20108.36, 20108.37, 20108.38,
20108.40, 20108.45, 20108.50,
20108.51, 20108.55, 20108.60,
20108.65, 20108.70, 20108.75, 20108.80

Title 3

05/07/07 AMEND: 6860
05/07/07 AMEND: 3433
05/03/07 ADOPT: 3035 REPEAL: 3035, 3035.1,
3035.2, 3035.3, 3035.4, 3035.5, 3035.6,
3035.7, 3035.8, 3035.9
04/25/07 AMEND: 3433(b)
04/23/07 AMEND: 3591.20
04/20/07 AMEND: 3591.20(a)
04/20/07 ADOPT: 3434
04/03/07 AMEND: 3591.20(a), 3591.20(b)
04/02/07 AMEND: 752, 796.6, 1301
03/28/07 AMEND: 3591.2(a)
03/27/07 ADOPT: 1446.9, 1454.16
03/21/07 ADOPT: 3591.20
03/15/07 ADOPT: 1371, 1371.1, 1371.2

03/07/07 AMEND: 3423(b)
 03/06/07 AMEND: 3700(c)
 02/15/07 ADOPT: 499.5, 513, 513.5 AMEND:
 498, 499, 500, 501, 502, 504, 505, 509,
 510, 511, 512, 512.1, 512.2, 514, 515,
 516, 517, 525, 551, 552, 553, 554, 604.1
 REPEAL: 499.5, 503, 506, 508, 512.3,
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Title 18		04/17/07 ADOPT: 40622, 40635.1, 40635.2, 40648, 40660, 40661, 40733, 40752 AMEND: 40603, 40635, 40743, 40747 REPEAL: 40753
04/25/07	AMEND: 1620	04/13/07 ADOPT: 66267.10 AMEND: 66264.1, 66265.1, 66270.1
04/10/07	AMEND: 1655	03/20/07 AMEND: 926–3, 926–4, 926–5
04/10/07	AMEND: 1566	03/20/07 ADOPT: 69106 AMEND: 69100, 69101, 69102, 69103, 69104, 69106 (renumber to 69107), 69107 (renumber to 69108)
03/30/07	AMEND: 1571	03/12/07 AMEND: 4400(ee) REPEAL: 4407, 4425, 4441.5
03/22/07	ADOPT: 4500, 4501, 4502, 4503, 4504, 4505, 4506, 4507, 4508, 4509, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4700, 4701, 4702, 4703	02/28/07 AMEND: 92001, 92002, 92003, 92004, 92005, 92006, 92007, 92008, 92009, 92010, 92011, 92012, 92101, 92201, 92202, 92301, 92302, 92303, 92304, 92305, 92306, 92307, 92308, 92309, 92310, 92311, 92312, 92313, 92401, 92501, 92601, 92602, 92603, 92604, 92701, 92702
03/08/07	AMEND: 1602	02/23/07 AMEND: 100540
01/23/07	AMEND: 25110	02/22/07 AMEND: 100066, 100079
01/03/07	AMEND: 1610	02/22/07 ADOPT: 51003.1 AMEND: 51003, 51003.3
01/03/07	AMEND: 1705.1	01/30/07 AMEND: 2601.1
Title 19		01/30/07 AMEND: 12705
03/28/07	AMEND: 906.2	01/29/07 AMEND: 12000
02/28/07	ADOPT: 574.4, 574.5, 574.6 AMEND: 557.1, 561.2, 565.2, 566, 568, 573, 574.1, 574.2, 574.3, 574.4, 574.5, 574.6, 575.1, 575.3, Table 4, 575.4, 578.1, 591.5, 594.3, 595.1, 596.1. 596.2 REPEAL: 574.4, 574.5, 574.6	01/22/07 AMEND: 143–1
12/28/06	ADOPT: 574 REPEAL: 597, 597.1, 597.2, 597.3, 597.4, 597.9, 603, 603.1, 603.2, 603.4, 603.5, 604, 604.1, 604.2, 604.3, 604.4, 604.5, 605, 605.2, 606, 606.1, 606.2, 606.4, 607, 607.1, 608, 608.1, 608.2, 608.3, 608.4, 608.5, 608.6, 609, 609.1, 609.2, 609.3, 609.4, 609.5, 609.6, 609.7, 610, 612, 613, 614.2, 614.4	01/17/07 ADOPT: 86072.1 AMEND: 83064, 83072, 84072, 84079, 84172, 84272, 86072, 89372, 89379
Title 20		01/03/07 ADOPT: 101115 AMEND: 101115
03/28/07	AMEND: 1002, 1201, 1207, 1208, 1209, 1209.5, 1216, 1217, 1702, 1708, 1709.7, 1710, 1716, 1717, 1720, 1720.3, 1720.4,	12/29/06 ADOPT: 66260.202
		12/29/06 AMEND: Appendix X of Chapter 11 of Division 4.5
		12/27/06 ADOPT: 66261.9.5, 67386.1, 67386.2, 67386.3, 67386.4

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04/25/07 AMEND: 3983
04/06/07 AMEND: 737, 768, 769, 770, 771, 852
03/23/07 ADOPT: 3989.6
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02/20/07 ADOPT: 3939.24
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